

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DAMON WHEELER,
Plaintiff,

v.

P.O. N. DEYOUNG; G. NEILSON; SGT.
MAGSAMEN; and THE CITY OF
MIDDLETOWN,
Defendants.
-----X

ORDER

16 CV 8857 (VB)

Copies Mailed/Faxed
Chambers of Vincent L. Brliccetti

2/26/20

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JH

Plaintiff, who is proceeding pro se and in forma pauperis, brings this action asserting claims related to the execution of two search warrants on April 26, 2014.

By Order dated November 14, 2017, this Court adopted Magistrate Judge Lisa Margaret Smith's Report and Recommendation on defendants' motion to dismiss the complaint. (Doc. #37). The Court's November 14 Order noted that plaintiff's criminal conviction for obstruction of governmental administration arising out of his arrest on April 26, 2014, would bar his Section 1983 claims in the instant action for unlawful search, false arrest, and malicious prosecution. (*Id.* at 2). Accordingly, the Court stayed all proceedings in this case pending the outcome of plaintiff's criminal appeal. (*Id.*).

By letter dated February 25, 2020, defense counsel notified the Court that on February 13, 2020, by memorandum decision, the New York Court of Appeals reversed the Appellate Term and dismissed the accusatory instrument in plaintiff's criminal case. (Doc. #75).

Accordingly, it is HEREBY ORDERED:

The stay issued on November 14, 2017, in this matter is vacated and the case is restored to the active docket.

By March 11, 2020, defendants shall answer the complaint, addressing plaintiff's remaining Section 1983 claims for unlawful search, false arrest, and malicious prosecution.

By separate order, the Court will schedule an initial conference in this case.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purposes of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

The Clerk is directed to mail a copy of this Order to plaintiff at the address on the docket.

Dated: February 26, 2020
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent L. Briccetti', followed by a long horizontal line extending to the right.

Vincent L. Briccetti
United States District Judge